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TELECOPIER TRANSMITTAL COVER SHEET

TO: **Paul Baker**DATE: **August 2, 2004**COMPANY: **DOGM**TELECOPIER NUMBER: **359-3940**

CITY/STATE:

PAGES (INCLUDING COVER SHEET): **17**FROM: **Matt Crockett**CLIENT/MATTER NUMBER: **1011.04**

MESSAGE:

Paul:

Attached is a copy of the CFR for toxic contaminants which we discussed on the telephone. Also attached is Wembco's "Experimenters Access Agreement." You will note that in addition to the TCLP analysis from the CFR, we are also requiring a total recoverable hydrocarbon analysis. As the owner of the mine, in the absence of virtually any knowledge of the experimenter's solvent (or reagent or whatever they call it), and in the absence of specific regulatory guidance for processed tar sands waste sand, these are the requirements which we have determined to be protective of the mine.

Wembco has authorized you to review the attached agreement and to share it with Utah DEQ. Please let me know if you have any questions or if DOGM or the DEQ would like to discuss the attachments. We appreciate your assistance.

THE INFORMATION CONTAINED IN THIS COMMUNICATION IS CONFIDENTIAL, MAY BE PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE OR THE WORK PRODUCT DOCTRINE, MAY CONSTITUTE INSIDE INFORMATION, AND IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE. UNAUTHORIZED USE, DISCLOSURE OR COPYING IS STRICTLY PROHIBITED AND MAY BE UNLAWFUL. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US AT (801) 531-8446.

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DIV. OF OIL, GAS & MINING

Environmental Protection Agency

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in ASTM Standard D-3278-78 (incorporated by reference, see § 260.11), or as determined by an equivalent test method approved by the Administrator under procedures set forth in §§ 260.20 and 260.21.

(2) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(3) It is an ignitable compressed gas as defined in 49 CFR 173.300 and as determined by the test methods described in that regulation or equivalent test methods approved by the Administrator under §§ 260.20 and 260.21.

(4) It is an oxidizer as defined in 49 CFR 173.151.

(b) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001.

[45 FR 33119, May 19, 1980, as amended at 46 FR 35247, July 7, 1981; 55 FR 22684, June 1, 1990]

§ 261.22 Characteristic of corrosivity.

(a) A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(1) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

(2) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55 °C (130 °F) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM-01-69 as standardized in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter.

(b) A solid waste that exhibits the characteristic of corrosivity has the EPA Hazardous Waste Number of D002.

[45 FR 33119, May 19, 1980, as amended at 46 FR 35247, July 7, 1981; 55 FR 22684, June 1, 1990; 58 FR 48049, Aug. 31, 1993]

§ 261.23 Characteristic of reactivity.

(a) A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(1) It is normally unstable and readily undergoes violent change without detonating.

(2) It reacts violently with water.

(3) It forms potentially explosive mixtures with water.

(4) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(5) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(6) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement.

(7) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

(8) It is a forbidden explosive as defined in 49 CFR 173.51, or a Class A explosive as defined in 49 CFR 173.53 or a Class B explosive as defined in 49 CFR 173.88.

(b) A solid waste that exhibits the characteristic of reactivity has the EPA Hazardous Waste Number of D003.

[45 FR 33119, May 19, 1980, as amended at 55 FR 22684, June 1, 1990]

§ 261.24 Toxicity characteristic.

(a) A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this chapter, the extract from a representative sample of the waste contains any of the contaminants listed in table 1 at the concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5 percent filterable solids, the waste

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itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purpose of this section.

(b) A solid waste that exhibits the characteristic of toxicity has the EPA Hazardous Waste Number specified in Table I which corresponds to the toxic contaminant causing it to be hazardous.

TABLE I—MAXIMUM CONCENTRATION OF CONTAMINANTS FOR THE TOXICITY CHARACTERISTIC

EPA HW No. ¹	Contaminant	CAS No. ²	Regulatory Level (mg/L)
D004	Arsenic	7440-88-2	5.0
D005	Berium	7440-38-3	100.0
D018	Benzene	71-43-2	0.5
D006	Cadmium	7440-43-9	1.0
D019	Carbon tetrachloride	58-23-5	0.5
D020	Chlordane	57-74-8	0.03
D021	Chlorobenzene	108-90-7	100.0
D022	Chloroform	67-68-3	8.0
D007	Chromium	7440-47-3	5.0
D023	o-Cresol	95-48-7	400.0
D024	m-Cresol	108-39-4	400.0
D025	p-Cresol	105-44-5	400.0
D026	Cresol		400.0
D016	2,4-D	94-75-7	10.0
D027	1,4-Dichlorobenzene	106-46-7	7.5
D028	1,2-Dichloroethane	107-06-2	0.5
D029	1,1-Dichloroethylene	75-35-4	0.7
D030	2,4-Dinitrotoluene	121-14-2	0.13
D012	Endrin	72-20-8	0.02
D031	Heptachlor (and its epoxide)	76-44-8	0.008
D032	Hexachlorobenzene	118-74-1	0.13
D033	Hexachlorobutadiene	87-68-3	0.5
D034	Hexachloroethane	67-72-1	8.0
D008	Lead	7439-92-1	5.0
D013	Lindane	58-99-9	0.4
D009	Mercury	7439-97-8	0.2
D014	Methoxychlor	72-43-5	10.0
D035	Methyl ethyl ketone	78-93-3	200.0
D036	Nitrobenzene	98-95-3	2.0
D037	Pentachlorophenol	87-66-5	100.0
D038	Pyridine	110-86-1	5.0
D010	Selenium	7782-49-2	1.0
D011	Silver	7440-22-4	5.0
D039	Tetrachloroethylene	127-18-4	0.7
D015	Toxaphene	8001-35-2	0.5
D040	Trichloroethylene	79-01-6	0.5
D041	2,4,5-Trichlorophenol	95-95-4	400.0
D042	2,4,6-Trichlorophenol	88-06-2	2.0
D017	2,4,5-TP (Silvex)	93-72-1	1.0
D043	Vinyl chloride	75-01-4	0.2

¹ Hazardous waste number.

² Chemical abstracts service number.

³ Quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level.

⁴ If o-, m-, and p-Cresol concentrations cannot be differentiated, the total cresol (D025) concentration is used. The regulatory level of total cresol is 200 mg/L.

[55 FR 11862, Mar. 29, 1990, as amended at 55 FR 22684, June 1, 1990; 55 FR 26987, June 29, 1990; 58 FR 46049, Aug. 31, 1993; 67 FR 11254, Mar. 13, 2002]

40 CFR Ch. I (7-1-03 Edition)

Subpart D—Lists of Hazardous Wastes

§ 261.30 General.

(a) A solid waste is a hazardous waste if it is listed in this subpart, unless it has been excluded from this list under §§ 260.20 and 260.22.

(b) The Administrator will indicate his basis for listing the classes or types of wastes listed in this subpart by employing one or more of the following Hazard Codes:

Ignitable Waste (I)
Corrosive Waste (C)
Reactive Waste (R)
Toxicity Characteristic Waste ... (E)
Acute Hazardous Waste (H)
Toxic Waste (T)

Appendix VII identifies the constituent which caused the Administrator to list the waste as a Toxicity Characteristic Waste (E) or Toxic Waste (T) in §§ 261.31 and 261.32.

(c) Each hazardous waste listed in this subpart is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number must be used in complying with the notification requirements of Section 3010 of the Act and certain recordkeeping and reporting requirements under parts 262 through 265, 268, and part 270 of this chapter.

(d) The following hazardous wastes listed in § 261.31 or § 261.32 are subject to the exclusion limits for acutely hazardous wastes established in § 261.5: EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026, and F027.

[45 FR 33119, May 19, 1980, as amended at 48 FR 14294, Apr. 1, 1983; 50 FR 2000, Jan. 14, 1985; 51 FR 40636, Nov. 7, 1986; 55 FR 11863, Mar. 29, 1990]

§ 261.31 Hazardous wastes from non-specific sources.

(a) The following solid wastes are listed hazardous wastes from non-specific sources unless they are excluded under §§ 260.20 and 260.22 and listed in appendix IX.

EXPERIMENTER'S ACCESS AGREEMENT

"D" TRACT MINE

This Access Agreement (the "Agreement") is made and entered into this ____ day of _____, 2004 by and between WEMBCO, INC., a California Corporation ("Wembco"), 20231 S.W. Orchid, Newport Beach, California 92660, and _____, a _____ corporation, [ADDRESS, CITY, STATE] ("Experimenter"), collectively, the Parties.

RECITALS

WHEREAS, Experimenter desires to enter Wembco's "D" Tract Mine located in Uintah County, Utah, as more accurately described in Attachment "A" attached hereto and incorporated herein by reference (the "Mine" or "D' Tract Mine"), for the purpose of testing its oil sands separation process and/or equipment; and

WHEREAS, Wembco owns the surface and mineral rights of the "D" Tract Mine, which are subject to the rights of Larry Allred, both individually and on behalf of Allred Paving (collectively "Allred"), of 3996 West 1500 North, Vernal, Utah 84078, to mine and remove oil sands from the Mine; and

WHEREAS Wembco desires to grant and Allred has consented to Wembco granting Experimenter limited access to the Mine for the purpose of testing its oil sands separation equipment upon the terms and conditions set forth in this Agreement; and

WHEREAS, Experimenter has entered into that certain agreement with Allred and others to purchase oil sands and oil shale for use in Experimenter's testing of its oil sands separation equipment on the "D" Tract Mine; and

WHEREAS, Wembco requires Experimenter to provide sufficient and adequate assurances in the form of insurance coverage, operational procedures, the sampling, analyses and reporting required by Attachment "B" hereto, and other security regarding protection of and reclamation of the Mine prior to Wembco allowing Experimenter access to the Mine; and

WHEREAS, Wembco has need to evaluate the operational performance of the various oil sands separation technologies tested at the Mine and requires Experimenter to furnish Wembco with certain operational data listed in Attachment "C" which is incorporated herein by this reference.

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Incorporation of Recitals. The above recitals are incorporated herein and made part hereof by reference.

2. Limited Grant of Access. Wembco hereby grants to Experimenter, a limited license to enter upon the Mine in order to conduct certain activities pertaining to the testing of Experimenter's oil sands separation equipment as set forth in that certain proposal prepared by Experimenter entitled _____, and dated _____, a copy of which has been delivered to Wembco (the "Activities"). The grant of access in this Agreement to Experimenter is and shall be deemed a limited grant for the purposes, for the specific location, and for the duration set forth herein. This limited grant is expressly made subject to the terms and conditions of Allred's rights in the Mine and the rights, if any, of third parties thereunder.

3. Conduct of the Activities.

3.1 Prior to entering the Mine, Experimenter shall supply Wembco with copies of Material Data Safety Sheets ("MSDS") for all chemicals, solutions, reagents, additives, conditioners, fuels, lubricants and materials which Experimenter intends to use on the Mine or during the course of the Activities.

3.2 Prior to conducting the Activities, Experimenter will direct the analytical laboratory and its Sampler and/or Environmental Professional as are identified and defined in Attachment "B" hereto and incorporated herein by reference, to conduct the Pre-Experiment Sampling defined therein.

3.3 Experimenter shall perform, or cause to be performed the Activities with the assistance of experienced and qualified employees, subcontractors, suppliers and agents. In conducting the Activities, Experimenter shall take all reasonable and lawful measures to assure the safety of persons and property on the Mine. Experimenter shall be responsible for proper supervision of all persons performing the Activities and shall assure that the Activities are undertaken in a good and workmanlike manner in accordance with all applicable governmental laws, rules, regulations, ordinances and orders. Experimenter shall obtain, or cause to be obtained, all permits, licenses, approvals and consents necessary or legally required in connection with the Activities undertaken at the Mine.

3.4 In conducting any operations on the Mine including the Activities, Experimenter shall be responsible for all costs associated with its operations and shall not allow any lien to be recorded against the Mine.

3.5 Containment Area. The Experimenter shall construct a containment area (the "Containment Area") at the location on the Mine designated by Allred. With the exception of storage of waste sand separated from oil sands and storage of waste shale

separated from oil shale, Experimenter shall conduct all Activities within the Containment Area. The Containment Area shall be constructed and maintained according to the following minimum standards:

a. Experimenter shall construct and maintain a continuous earthen berm large enough to completely encircle all of Experimenter's testing equipment, materials and storage vessels including, but not limited to all of Experimenter's liquids, chemicals, solutions, reagents, additives, conditioners, products, byproducts, separated oil or bitumen, filters and waste containers, fuels and lubricants. Such berm shall be engineered to contain one hundred fifty percent (150%) of the entire volume of Experimenter's liquid storage on the Mine.

b. The Containment Area's earthen berm described above in (a) shall be lined with an 80 mil seam-welded high density polyethylene liner.

c. The Containment Area shall contain pumps and liquid storage tanks for the recovery and storage of recovered spills and/or collection of stormwater from within the Containment Area with a minimum capacity of four hundred (400) gallons.

d. Experimenter shall immediately clean up any spill of liquids or materials occurring within the Containment Area or otherwise.

e. Within twenty-four (24) hours of any naturally occurring precipitation event, Experimenter shall pump all accumulated storm water from within the Containment Area into storage tanks located within the Containment Area.

f. Experimenter shall immediately repair any puncture or tear in the Containment Area liner.

g. Waste sand and waste shale shall be stockpiled separately on and covered by 6 mil plastic sheeting and shall be located within a continuous soil berm to prevent wind transport of the waste and to prevent infiltration of stormwater or surface water from flowing on to or out of the waste sand or waste shale stockpiles.

3.6 Offsite Disposal. Experimenter shall remove and transport from the Mine for offsite disposal all liquids, chemicals, solutions, reagents, additives, conditioners, products, byproducts and liquid and solid wastes (excluding Clean Waste Sand as defined in Section 3.7, below) at appropriate disposal facilities.

3.7 Onsite Disposal for Clean Waste Sand Only. If the testing and analysis required by Attachment "B" shows that waste sand, defined for the purposes of this

Agreement as that soil, sand and rock which remains after separation of the hydrocarbons from oil sands originating on the "D" Tract Mine or Wembco's "A" Tract Mine, is acceptable to Wembco for use as clean fill materials at the Mine (the "Clean Waste Sand"), Experimenter may leave such Clean Waste Sand on the Mine following termination of the Activities. Wembco will only accept Clean Waste Sand which does not contain contaminant concentrations equal to or greater than those values for characteristic toxicity listed in 40 C.F.R. § 261.24 and the total recoverable hydrocarbon concentration does not exceed 1,000 parts per million, and corrosivity and pH are within normal ranges.

3.8 Offsite Disposal for Oil Shale and Oil Shale Wastes. Experimenter shall dispose all nature of oil shale imported to the Mine and all oil shale waste, including any rock or ash at an appropriate offsite disposal facility. Experimenter shall not dispose of any oil shale or oil shale waste on the Mine.

3.9 Compliance Sampling and Analysis. Experimenter shall contract and fully compensate the Analytical Laboratory and its Sampler and/or Environmental Professional identified in Attachment "B" to conduct the sampling, analysis and reporting required by Attachment "B" such sampling to be conducted prior to, during and following the Activities.

3.10 Performance Monitoring by Experimenter. In addition to the sampling, analyses, and reporting specified in Attachment "B," Experimenter shall conduct sufficient operational monitoring to provide Wembco with at least the minimum performance data specified in Attachment "C" hereto.

3.11 Labeling. Experimenter shall label all storage containers as to their contents and to conform with U.S. Environmental Protection Agency ("EPA"), Occupational Safety and Health Administration ("OSHA"), Mining Safety and Health Administration ("MSHA"), Department of Transportation ("DOT"), Motor Carrier Act ("MCA") and National Fire Protection Administration ("NFPA") standards as appropriate.

3.12 Restoration. Upon completion of the Activities, Experimenter shall remove the Containment Area, collect the Post-Experiment samples specified in Attachment "B" hereto, and promptly return the Mine to grade by restoring the surface of the Mine to substantially the condition that existed immediately prior to Experimenter's entry thereon and remediating any pollution or contamination attributable to the Activities or Experimenter's operations on the mine.

4. Notifications by Experimenter. Experimenter shall notify Wembco in writing and not less than five (5) business days prior to the Pre-Experiment Sampling, and prior to commencement or termination of the Activities. All notices to Wembco shall be in writing and shall be sent to:

Mr. James L. Barnes, Wembco, Incorporated
20231 S.W. Orchid
Newport Beach, California 92660

(Facsimile)

and to:

Matthew L. Crockett, PRUITT GUSHEE
1800 Beneficial Life Tower
Salt Lake City, Utah 84111
(801) 531-8468 (Facsimile)
mlc@pruittgushco.com (Email)

5. Right to Inspect. Wembco may, at its expense, inspect and review the conduct of the Activities from time to time at Wembco's discretion and may take splits or duplicates of any samples collected pursuant to this Agreement or its Attachment "B."

6. Indemnification and Insurance.

6.1 Release and Indemnification. Experimenter hereby agrees to indemnify, release, hold harmless and defend Wembco and Wembco's affiliates, directors, officers and employees from and against any claims, causes of action, damages, expenses (including without limitation, reasonable attorneys' fees and reasonable investigative and discovery costs), liabilities and judgments for the following: Liens noted in Paragraph 3.4 above; injury to persons, loss of life, or damage to real or personal property, and public liability, pollution, environmental or natural resource damages or claims, whether occurring on the Mine or elsewhere caused by or arising out of the actions or inactions of Experimenter and/or its employees, subcontractors, suppliers and agents.

6.2 Insurance. At all times during the conduct of the Activities, Experimenter shall maintain at least the following minimum insurance coverage for the Activities, and name Wembco as additional insured:

- a. Worker's compensation – statutory limits;
- b. Employer's liability – One Hundred Thousand Dollars (\$100,000);
- c. Comprehensive General and Commercial Automobile Liability as follows:
 - i. "Combined Single Limit" (covering personal injury liability, bodily injury liability, and property damage liability) of not less than One Million Dollars (\$1,000,000) for total claims for any one occurrence and

not less than Two Million Dollars (\$2,000,000) for total claims in the aggregate;

ii. Independent Contractor's Liability or Owner's Protective Liability with the same coverage as in (i) above;

iii. Products/Completed Operations Coverage in an amount not less than Two Million Dollars (\$2,000,000); and

d. Contractor's Pollution Liability (covering personal injury, property damage and cleanup expenses resulting from pollution conditions) of not less than One Million Dollars (\$1,000,000) for total claims for any one occurrence and not less than Two Million Dollars (\$2,000,000) for total claims in the aggregate.

6.3 Policy Requirements. Prior to entering the Mine and thereafter upon request, Experimenter shall supply Wembco certificates of insurance reasonably evidencing compliance with the requirements of this Article Six. The insurance policies and certificates required by this Article shall require the insurance company(s) to furnish Wembco written notice thirty (30) days prior to any cancellation or lapse of a policy, or the effective date of any reduction in the amounts or scope of coverage.

6.4 Performance of Indemnity Agreements. All policies of liability insurance shall insure the performance by Experimenter of the indemnity and liability provisions herein. Wembco shall promptly notify Experimenter of any asserted claim with respect to which Wembco is or may be indemnified against hereunder and shall deliver Experimenter copies of any service of process or pleadings.

7. Removal and Disposal of Wastes, Products, Byproducts and Contaminated Materials. Experimenter shall store, transport, dispose of, handle and remove all wastes, products, byproducts as well as any contaminated materials including soil or water generated at the Mine by Experimenter in accordance with this Agreement, any attachments or amendments hereto, and all applicable laws, rules, regulations and orders. Experimenter shall not take any action nor fail to act, so as to permit the Mine to violate any applicable Federal, state or local environmental law, rule or regulation or to become a hazardous waste facility or a treatment, storage or disposal facility under any applicable laws, rules, regulations or orders.

8. Responsibility for Safety. Experimenter shall conduct the Activities in a manner so as to protect all persons at or coming onto the Mine from accidents and injury and in a manner to avoid damage to the Mine, Allred's operations, neighboring properties and/or any improvements or equipment located thereon. Experimenter shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Activities, including without limitation, installation and maintenance of the Containment Area and all of Experimenter's equipment, use of

monitoring devices, storage of materials, chemicals and wastes, posting of danger signs, communication of hazards or other warnings against hazards as may be required or prudent, erection of appropriate enclosures, fences and barriers, and providing and requiring protective clothing and equipment, if necessary.

9. Limitation on Use of the Mine. Experimenter agrees that no equipment, the Containment Area, nor materials or wastes of any kind placed on or generated on the Mine by or at the direction of Experimenter shall remain on the Mine after the termination of this Agreement without Wembco's prior written consent.

10. Information Pertaining to the Mine. As required by Attachment "B," Experimenter will direct its Sampler and/or Environmental Professional to furnish Wembco with written analytical results, drawings, engineering evaluations and other significant reports and findings relating to the sampling and analysis required in Attachment "B" as well as the closure and removal of the Containment Area, disposal of wastes, and any remediation, monitoring or restoration activities undertaken on behalf of Experimenter at the Mine. Experimenter shall direct its Sampler and/or Environmental Consultant to communicate with and provide information pertaining to the Mine or materials removed therefrom, directly to Wembco upon Wembco's request. Experimenter shall promptly provide Wembco with advance written notice of any intended communications and/or meeting with any governmental agencies relating to environmental conditions on or the use or operation of the Mine. Wembco may, if Wembco desires, attend in person or through its representatives any meeting with a governmental agency pertaining to the Mine.

11. Assignability. This Agreement and the rights and obligations created hereunder shall not be assigned by Experimenter in whole or in part, without Wembco's prior written consent.

12. Attorneys' Fees. In the event either Party to this Agreement commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing Party in such action shall have the right to recover reasonable attorneys' fees and costs from the opposing party, to be fixed by the court in the same action. The term "legal proceedings" shall include appeals from a lower court judgment as well as proceedings in the Federal Bankruptcy Court (the "Bankruptcy Court"), whether or not they are adversary proceedings or contested matters. The "prevailing Party" (a) as used in the context of proceedings in the Bankruptcy Court shall mean the prevailing Party in an adversary proceeding or contested matter, or any other actions taken by the non-bankruptcy party which are reasonably necessary to protect its rights under the terms of this Agreement, and (b) as used in the context of proceedings in any court other than the Bankruptcy Court shall mean the Party that prevails in obtaining a remedy or relief which most nearly reflects the remedy or relief the Party sought.

13. Expiration. The grant of access under this Agreement shall automatically expire on _____, unless otherwise mutually agreed to in writing by the Parties. Access to the Mine by Experimenter after the expiration date shall be made pursuant to separate agreement. All other recitals, terms, covenants and conditions of this Agreement shall survive expiration of the grant of access.

14. Force Majeure. Wembco shall not be deemed in breach of this Agreement for Wembco's failure to grant access to the Mine if such access is prevented or substantially impeded by governmental action or other cause not reasonably within the control of Wembco. After cessation of such governmental action or other cause, Experimenter shall be entitled to resume reasonable access to the Mine as set forth herein and the expiration date hereunder shall be extended for the period of time that the force majeure event was preventing or impeding access.

15. Miscellaneous.

a. The terms, covenants and conditions contained in this agreement shall be binding upon and inure to the benefit of the heirs, successors, transferees and assigns of the Parties except as otherwise expressly limited in this Agreement.

b. Nothing contained in this Agreement shall be deemed to create the relationship of principal and agent, partnership, or joint venture between the Parties.

c. As of the date hereof, this Agreement and its Attachments constitute the entire agreement between the Parties with respect to the specific subject matter hereof and may only be modified by a subsequent writing duly executed by each of the Parties.

d. Time is expressly made of the essence of each and every provision of this Agreement.

e. This Agreement shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against any Party. This Agreement shall be construed and enforced in accordance with, and governed by the laws of the State of Utah.

f. The individuals executing this Agreement represent and warrant that they have the power and authority to do so and to bind the entities for whom they are executing this Agreement, and that no other act, signature or consent is necessary to bind their respective entities to the terms of this Agreement.

g. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be held by a court in an action

between the parties or otherwise affecting this Agreement to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

h. Headings used in this Agreement are for convenience of reference only and in no way define, limit or describe the scope or intent of any provisions or terms hereof.

i. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

WEMBCO, INCORPORATED,
a California Corporation

By: _____
Its: _____

[EXPERIMENTER]

a _____ Corporation

By: _____
Its: _____

Attachment "A"	Legal Description of "D" Tract Mine and Map Labeled "Wembco Mine S/047/068"
Attachment "B"	Environmental Sampling and Reporting Requirements
Attachment "C"	Performance and Operational Data Requirements

ATTACHMENT "A"

to

EXPERIMENTER'S ACCESS AGREEMENT
"D" TRACT MINE

Legal description to "D" Tract Mine:

Township 4 South, Range 20 East, SLM

Section 24: SW $\frac{1}{4}$ NW $\frac{1}{4}$

Section 23: SE $\frac{1}{4}$ NE $\frac{1}{4}$

(containing 4.86 acres, more or less, in Uintah County, Utah)

ATTACHMENT "B"

to

**EXPERIMENTER'S ACCESS AGREEMENT
"D" TRACT MINE**

This Attachment "B" defines the Pre-Experiment, Air Emissions, and Post-Experiment sampling, analysis and reporting Experimenter has agreed to conduct and provide to Wembco, Incorporated ("Wembco") pursuant to that certain Experimenter's Access Agreement, "D" Tract Mine, dated _____, 2004 (the "Agreement").

1. Experimenter has hired Utility Testing Laboratory ("UTL" or "Analytical Laboratory"), 40 West Louise Avenue, Salt Lake City, Utah 84115, to collect the samples and perform the analytical testing required by this Attachment. UTL shall subcontract the sampling and reporting required hereby to an Environmental Professional, or Sampler, defined for purposes of this agreement as a State of Utah Department of Environmental Quality-certified Soil and Groundwater Sampler (hereafter, "Sampler"). If any analysis specified hereunder is not normally performed by UTL, UTL may subcontract such analysis to another independent State of Utah and EPA-certified analytical laboratory. All samples shall be transported and stored according to standard chain-of-custody procedures to maintain the integrity of the samples.

2. UTL and Sampler shall supply all analytical reports, Sampler's reports, and chains-of-custody to Wembco. Experimenter shall instruct UTL and Sampler to communicate directly with Wembco upon Wembco's request.

3. After construction of the Containment Area's earthen berm as defined in the Agreement, but prior to installation of the high density polyethylene liner, the Sampler shall collect four (4) soil samples from random locations within the berm, each being composited from zero (0) to twelve (12) inches below the ground surface ("bgs"). In addition, the Sampler shall collect one soil sample from beneath the area designated for waste sand storage, composited from zero (0) to twelve (12) inches bgs, and another from beneath area designated for waste shale storage composited from zero (0) to twelve (12) inches bgs. These six samples being the "Pre-Experiment Samples."

a. The Pre-Experiment Samples shall be analyzed by Toxicity Characteristic Leaching Procedure ("TCLP") for those contaminants listed in 40 C.F.R. § 261.24 (the "Toxic Contaminants") and for Total Recoverable Petroleum Hydrocarbons ("TRPH"), corrosivity and pH.

4. Air Emissions. Commencing with the initial operation of Experimenter's oil sands separation equipment, Sampler shall collect air samples from the oil sands separation equipment at locations designed to detect air emissions whether they be from a

discrete source or fugitive. If emissions are fugitive, the air samples shall be collected from the working area on or around the separation equipment.

a. If the air emissions are measured from discrete source, the sampler shall measure and report the rate of emissions and the volume of the emissions in cubic feet per minute. If the emissions are fugitive, the sampler shall estimate the rate of emissions.

b. The air samples shall be analyzed for [VOCs by EPA Method 8260 or To14]. Analytical results for the air samples shall be reported in concentration per volume.

c. The air sampling shall be repeated every two (2) weeks during operation of the separation equipment.

5. Post Experiment Samples. Following completion of the oil sands separation tests, the Sampler shall collect the following samples and UTL shall conduct the analyses as indicated:

a. Waste Sand Stockpile: Following the oil separation test, the following samples shall be collected from the waste sand stockpile:

i. Sampler shall collect two composite soil samples from the waste sand stockpile. The samples shall be collected and composited in a manner to accurately describe the concentration of potential contaminants in the waste sand. These samples shall be analyzed for Toxic Contaminants, TRPH, corrosivity and pH and shall be analyzed on a 24-hour turnaround with the results being faxed to Wembco. If the laboratory analysis indicates that the waste sand is acceptable to Wembco for use on the mine as clean fill, and Wembco acknowledges the same to Experimenter in writing, Experimenter may release the waste sand to Wembco's contract miner, Allred.

ii. After removal of the waste sand stockpile, whether by Allred or whether it is disposed offsite Experimenter, the Sampler shall collect three soil samples from beneath the former location of the waste sand stockpile. Discrete soil samples shall be collected from any visually impacted soils underlying or surrounding the stockpile's former location from depths designed to detect the highest concentrations of potential contaminants. If the Sampler does not observe any visually impacted soils, the three (3) soil samples shall be collected from random locations under the former waste sand stockpile's location, each being composited from zero (0) to twelve (12) inches bgs. The samples shall be analyzed for Toxic Contaminants, TRPH, corrosivity and pH.

iii. Waste Shale Stockpile: After removal of the waste shale stockpile (by offsite disposal), the Sampler shall collect three soil samples from beneath the former location of the waste shale stockpile. Discrete soil samples shall be collected from any visually impacted soils underlying or surrounding the stockpile's former location from depths designed to detect the highest concentrations of potential contaminants. If the Sampler does not observe any visually impacted soils, the three (3) soil samples shall be collected from random locations within the former waste shale stockpile's location, each being composited from zero (0) to twelve (12) inches bgs. The samples shall be analyzed for Toxic Contaminants, TRPH, corrosivity and pH.

b. Containment Area: After all separation equipment, stored wastes, chemicals, liquids, solutions, additives, reagents, separated oil or bitumen, fuels, lubricants, materials, products, and byproducts have been removed from the Mine and the liner has been removed from the Containment Area, the Sampler shall collect a minimum of four (4) discrete soil samples from any visually impacted soils underlying or surrounding the Containment Area from depths designed to detect the highest concentrations of potential contaminants. If the Sampler does not observe any visually impacted soils, the four (4) soil samples shall be collected from random locations within the former Containment Area, each being composited from zero (0) to twelve (12) inches bgs. The samples shall be analyzed for Toxic Contaminants, TRPH, corrosivity and pH.

6. Confirmation Samples. If the Post-Experiment Samples detect contamination or pollution of the Mine attributable to Experimenter's operations, Experimenter shall be required to remedy the impact pursuant to the Agreement. Following any such remedial action or cleanup, Wembco may require such other reasonable samples to confirm that the impact to the Mine has been remedied. Any such confirmation samples may be collected by UTL or the Sampler upon the request of Wembco.

7. Reporting. The Sampler shall record the location of all samples collected on an appropriately scaled site plan depicting the particular area (i.e., the Containment Area or waste sand stockpile, etc.). The Sampler shall also prepare a narrative report for each the Pre-Experiment, the Air Emissions and Post-Experiment samples, describing at a minimum: (a) the locations sampled with reference to the site plan; (b) photographs of the particular area sampled; (c) sampling methodology; (d) the Sampler's observations regarding apparent impacts to the Mine; (e) chain-of-custody procedures; and (f) the analytical results. A site plan shall accompany each Sampler's report.

ATTACHMENT "C"

to

EXPERIMENTER'S ACCESS AGREEMENT
"D" TRACT MINE

This Attachment "C" sets forth the minimum operational and performance data regarding Experimenter's oil sands separation equipment test which Experimenter has agreed to collect and provide to Wembco, Incorporated ("Wembco") pursuant to that certain Experimenter's Access Agreement, "D" Tract Mine, dated _____, 2004 (the "Agreement").

Experimenter shall, within fifteen (15) days of completion of the Activities, as that term is defined in the Agreement or within fifteen (15) days of expiration of the Agreement, whichever occurs first, provide the following information to Wembco regarding Experimenter's oil sands separation test conducted at Wembco's "D" Tract Mine.

- A. Hours and minutes the Experimenter's separation equipment operated.
- B. Number of days Experimenter's equipment operated at the Mine.
- C. Mass and/or volume of oil sands ore processed.
- D. Volume of hydrocarbons separated.
- E. Mass and/or volume of waste sand generated.
- F. Average oil content (determined by assay) of oil sands ore processed.
- G. Average oil content (determined by assay) of waste sand.
- H. Mass of volatile organic compounds emitted to the atmosphere by the separation equipment over the course of the separation test.
- I. Volume of fuel consumed during the course of the separation test.
- J. Volume of wastewater generated by the separation equipment.
- K. Hazardous characteristics of any solid or liquid wastes generated by the process.

The operational and performance data required by this Attachment "C" is in addition to those sampling, analysis and reporting requirements in Attachment "B."